

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 CRIMINAL WRIT PETITION NO.244 OF 2020

RAVINDRA S/O. SOMA TAYDE
VERSUS
MANGALA RAVINDRA TARTE (AS SHOWN IN TITLE CLAUSE OF
JUDGEMENT) MANGALA W/O. KAILAS SONAWANE

Mr.B.R. Kedar, Advocate for the petitioner.
Ms.Shaikh Afreen Fatima, Advocate for the respondent.

CORAM : N.R.BORKAR, J.
DATED : 16.11.2021

PC :-

01. This petition challenges judgment and order dated 31.12.2019 passed by the Additional Sessions Judge, Bhusawal in Criminal Revision Application No.108/2017.

02. The respondent herein filed an application under section 125 of Cr.P.C. for maintenance. The application filed by the respondent for maintenance was initially allowed by order dated 27.03.2012. Against said order, revision was carried before the Sessions Court. In the revision, said order dated 27.03.2012 was set aside and the matter was remanded back to the Court of learned

JMFC. After remand the application was allowed by order dated 14.09.2016. Application thereafter was filed by the present petitioner before the learned Magistrate for recalling the said order dated 14.09.2016 as according to the petitioner, it was passed ex-parte. Against the very same order, revision petition was filed by the respondent challenging the order to the extent of grant of maintenance from the date of order instead of from the date of application. The application filed by the petitioner for recalling/setting aside order dated 14.09.2016 came to be allowed by order dated 26.03.2019 and the following order was passed :-

" ORDER
1] The application is allowed subject to following conditions.
A] The application is allowed subject to cost of Rs.15,000/-.
B] The cost to be paid to the applicant within a period of Seven days.
C] The applicant to pay 50% of outstanding amount due against him in respect of which the execution bearing No.413/2016 is filed to be paid within 15 days.
D] The applicant to approach the Court in which the matter would be numbered on 12/04/2019 without any notice being served to him.
E] Parties to make efforts to dispose of the matter as expeditiously as possible.
F] Failure of the above mentioned condition A,B,C,D this order shall automatically stand vacated."

03. As the revision petition filed by the respondent against the order dated 14.09.2016 was pending before the Sessions Court, a pursis was filed and it was mentioned therein that the order dated 14.09.2016 itself is recalled and therefore the revision petition, does not survive and it has become infructuous. In-spite of it, learned Sessions Court allowed the revision petition filed by the respondent by the order impugned.

04. I have heard learned Counsel for the petitioner and learned Counsel for the respondent. Learned Counsel for the petitioner submits that admittedly, the revision petition was filed against order dated 14.09.2016. It is submitted that as the said order dated 14.09.2016 was recalled by order dated 26.03.2019 and therefore, the Sessions Court ought not to have entertained the revision petition. It is further submitted that the learned Magistrate was not justified in directing the petitioner to pay 50% of outstanding amount due against him by order dated 26.03.2019, in absence of any order of maintenance

in favour of the respondent.

05. Perusal of the order impugned reveals that the revision petition was filed against order dated 14.09.2016. Admittedly, said order dated 14.09.2016 came to be recalled/set aside pursuant to the application filed by the petitioner. The revisional Court, however, while allowing the revision petition has observed "The non-applicant has not clarified as regards compliance of the order. The non-applicant has also failed to clarify whether the matter is actually restored or not. Therefore, incomplete information submitted by the non-applicant cannot be considered to treat the revision as infructuous." The learned revisional Court before entertaining the revision ought to have sought the information from the Court of learned Magistrate with regard to compliance of order dated 26.03.2019.

06. The learned Counsel for the petitioner submits that the petitioner has already deposited costs of

Rs.15,000/- as per order dated 26.03.2019. He further submits that the petitioner has not deposited 50% of amount as per clause (C) of operative order dated 26.03.2019 as same is questioned in the present petition. As I declined to entertain the present petition against clause (C) of operative order dated 26.03.2019, the learned Counsel for the petitioner submits that the petitioner will deposit 50% of amount as per clause (C) of order dated 26.03.2019 in pending Criminal M.A.No.296 of 2009. In the result, following order is passed :-

O R D E R

- i) The petition is partly allowed.
- ii) The order dated 31.12.2019 passed by the Additional Sessions Judge, Bhusawal in Criminal Revision Application No.108/2017 is set aside.
- iii) The petitioner is granted one month's time to deposit the amount as per clause (C) of order dated 26.03.2019.
- iv) The learned Magistrate shall endeavour to decide Criminal M.A. No.296 of 2009 as early as possible and in any case within six months from the receipt of copy of this order.

[N.R.BORKAR,J.]